

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 02/28/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

In re the Matter of:) 1 CA-CV 11-0120
)
KIMBERLY LEA TOMICH) DEPARTMENT E
)
Plaintiff/Appellee,) **MEMORANDUM DECISION**
)
v.) (Not for Publication -
) Rule 28, Arizona Rules of
TRAVIS GARY TOMICH,) Civil Appellate Procedure)
)
Defendant/Appellant.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. FC2010-071152

The Honorable Richard Albrecht, Commissioner

AFFIRMED

Kimberly Lea Tomich, Pro Per) Phoenix
Plaintiff/Appellee)

LAW OFFICES OF GIL NEGRETE, P.C.) Phoenix
By Daniel J. Kaffana)
Attorneys for Defendant/Appellant)

H A L L, Judge

¶1 Travis Tomich (Husband) appeals from the superior court's grant of an order of protection against him on behalf of

Kimberly Tomich (Wife). For the reasons discussed below, we affirm the superior court's order.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 The following relevant facts are not disputed. Husband and Wife were married on November 26, 2005. On August 11, 2010, Husband filed a petition for dissolution of marriage.

¶3 On December 13, 2010, Wife filed a petition for order of protection against Husband. In the petition, Wife alleged that on August 15, 2010, Husband, who had previously vacated their marital residence, came into the home while she was at work and removed valuable possessions. She also alleged that, during October 2010, Husband and his girlfriend harassed her via email and telephone, including calling her place of employment. Finally, Wife alleged that on December 10, 2010, Husband broke into the marital residence by cutting large holes in the garage door, removed numerous appliances and other valuables, and then turned on the kitchen faucet before leaving.

¶4 Pursuant to Husband's request, the superior court held a hearing on the order of protection on January 3, 2011. After receiving testimony and exhibits from the parties, the superior court found that Husband "committed an act of domestic violence within the last year or may commit an act of domestic violence in the future" and therefore found good cause to continue the order of protection. See Ariz. Rev. Stat. § 13-3602(E) (Supp.

2011). Husband appealed. We have jurisdiction pursuant to A.R.S. § 12-2101(B) (2003).

DISCUSSION

¶15 On appeal, Husband contends that the superior court erred by finding he committed an act of criminal damage and upholding the order of protection on that basis.¹

¶16 We review a trial court's decision to grant an order of protection for an abuse of discretion. See *LaFaro v. Cahill*, 203 Ariz. 482, 485, ¶ 10, 56 P.3d 56, 59 (App. 2002). "The misapplication of the law to undisputed facts is an example of an abuse of discretion." *Id.*

¶17 A person may file a verified petition for an order of protection "for the purpose of restraining a person from committing an act [of] domestic violence." A.R.S. § 13-3602(A) (Supp. 2011). The petition must include "[s]pecific statements, including dates, of the domestic violence alleged." A.R.S. § 13-3602(C)(3). The superior court examines the petition and evidence offered by the plaintiff "to determine whether the orders requested should issue without further hearing." A.R.S. § 13-3602(E). If an ex parte order has been issued, the defendant is entitled to a hearing if requested timely. A.R.S.

¹ Wife did not file an answering brief. Although we may regard a failure to respond as a confession of reversible error, we are not required to do so, *Gonzales v. Gonzales*, 134 Ariz. 437, 437, 657 P.2d 425, 425 (App. 1982), and in our discretion we choose to address the merits of this appeal.

§ 13-3602(I). After the hearing, the court may continue the order of protection if it determines there is "reasonable cause to believe" either that the defendant "may commit an act of domestic violence" or that the defendant has committed such an act within the past year. A.R.S. § 13-3602(E)(1) and (2).

¶18 Husband asserts that the superior court found he committed an act of criminal damage when he cut holes in the garage door of the marital residence, and contends that this was the sole basis for the court's further finding that he committed or may commit an act of domestic violence. Alleging that the marital residence is sole and separate property, Husband argues that he could not have committed an act of criminal damage to his own property and the superior court therefore erred by finding he had committed or may commit an act of domestic violence. See A.R.S. § 13-1602(A)(1) (2010) ("A person commits criminal damage by recklessly . . . damaging property of another person[.]") (emphasis added).

¶19 On the record before us, we cannot say that the superior court abused its discretion by upholding the order of protection. Although Husband cites a transcript throughout his brief for the propositions that he is the sole owner of the marital residence and the superior court found he committed criminal damage as its sole basis for upholding the order of protection, the record on appeal does not include a transcript

of the hearing. As the appellant, it is Husband's responsibility to ensure that the necessary transcripts have been included in the record. See Ariz. R. Civ. App. P. 11(b)(1). In the absence of a complete record, we must presume the missing transcript supports the court's ruling. See *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995) ("When a party fails to include necessary items, we assume they would support the court's findings and conclusions.").

CONCLUSION

¶10 For the foregoing reasons, we affirm the superior court's ruling. We further deny Husband's request for attorneys' fees.

/s/

PHILIP HALL, Judge

CONCURRING:

/s/

PATRICIA A. OROZCO, Presiding Judge

/s/

JOHN C. GEMMILL, Judge